

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**ELI MISTOVICH, Jr.**

**Plaintiff**

**V.**

**ELIZABETH BOWDEN, STEPHEN  
URBAN, STEPHEN NEVERO and  
ALISON LEATON,**

**Defendants**

**CIVIL ACTION NO. 04-12340-EFH**

**AFFIDAVIT OF PLAINTIFF'S COUNSEL  
AUTHENTICATING SUMMARY JUDGMENT  
OPPOSITION MATERIALS**

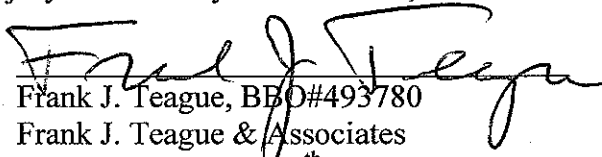
Frank J. Teague deposes and says as follows:

1. I am counsel of record for the Plaintiff Eli Mistovich, Jr. This affidavit is submitted for the purpose of authenticating materials in opposition to Defendants' motion for summary judgment.
2. Attached hereto as Opposition Exhibit 1 is a true and accurate copy of certain pages of the deposition of Plaintiff Eli Mistovich Jr. taken on September 22, 2005.
3. Attached hereto as Opposition Exhibit 2 is a true and accurate copy of certain pages of the deposition of Defendant Elizabeth Bowden taken on September 27, 2005.
4. Attached hereto as Opposition Exhibit 3 is a true and accurate copy of certain

pages of the deposition of Defendant Stephen Urban taken on September 14, 2005.

5. Attached hereto as Opposition Exhibit 4 is a true and accurate copy of certain pages of the deposition of Defendant Stephen Neverro taken on September 15, 2005.
6. Attached hereto as Opposition Exhibit 5 is a true and accurate copy of certain pages of the deposition of Alison Leaton taken on September 29, 2005.
7. Attached hereto as Opposition Exhibit 6 are true and accurate copies of Deposition Exhibits 1,2,5,6,8,11,18-22, and 28-32 marked for identification during the above depositions.

Signed under penalties of perjury this 28<sup>th</sup> day of November, 2005.

  
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**OPPOSITION EXHIBIT 1 – Deposition of Plaintiff Eli Mistovich, Jr.**

Eli Mistovich, Jr.

09/22/2005

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EXHIBITS: 11 - 27

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 04-3746

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ELI MISTOVICH, JR.,  
Plaintiff,

vs.

ELIZABETH BOWDEN, STEPHEN URBAN,  
STEPHEN NEVERO, AND ALISON LEATON,  
Defendants.

----- -x

DEPOSITION OF ELI MISTOVICH, JR.

Thursday, September 22, 2005, 11:30 a.m.

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Reporter: Deborah L. Maren, RPR

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Eli Mistovich, Jr.

09/22/2005

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Eli Mistovich, Jr.

09/22/2005

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## I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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1 documents home with you that were related to MBCR?

2 A. No.

3 Q. After you left MBCR, did you take any  
4 records home with you relating to MBCR business?

5 A. No.

6 Q. After you left MBCR, did you ask anybody at  
7 Mass. Bay Commuter Rail to get you any records?

8 A. No.

9 Q. I'd like to turn to some questions about  
10 your education and training and experience. Would you  
11 begin by first telling me about your educational  
12 background.

13 A. High school? College? What would you  
14 like?

15 Q. When did you graduate high school?

16 A. 1970.

17 Q. And did you get a degree from college?

18 A. Yes.

19 Q. What college did you go to?

20 A. Northeastern University in Boston.

21 Q. And what degree did you get?

22 A. Bachelor of science with honors, civil  
23 engineering.

24 Q. And when was that?

1 A. 1975.

2 Q. Had you received any other degrees other  
3 than those, the high school diploma and the bachelor of  
4 science?

5 A. No.

6 Q. And what was your first job after getting  
7 your bachelor of science?

8 A. Penn Central Railroad, management trainee.

9 Q. And how long did you work with Penn  
10 Central?

11 A. A little less than one year.

12 Q. And then what was your next job?

13 A. Assistant supervisor in Stamford,  
14 Connecticut.

15 Q. And was that also for Penn Central?

16 A. By then Penn Central had become Conrail  
17 Consolidated Rail Corporation.

18 Q. And when was that that you became an  
19 assistant -- was it assistant superintendent?

20 A. Assistant supervisor.

21 Q. Supervisor at Conrail?

22 A. Summer of 1976.

23 Q. And what was your next position after that?

24 A. Assistant supervisor at Warren,



1 Pennsylvania.

2 Q. Again for Conrail?

3 A. Yes.

4 Q. And when was that?

5 A. From the autumn of 1976 until the spring of  
6 1977.

7 Q. And what was your next job after that?

8 A. Track supervisor at Beacon Park in Boston.

9 Q. And is Beacon Park the name of the  
10 location?

11 A. It's the yard over in Allston, the Allston  
12 section of Boston.

13 Q. And was that still with Conrail?

14 A. Yes.

15 Q. And what period of time did you serve in  
16 that position?

17 A. For the remainder of 1977.

18 Q. And what was your next position after  
19 that?

20 A. Amtrak project engineer.

21 Q. And when did you take that position?

22 A. In January of 1978.

23 Q. And how long were you the Amtrak project  
24 engineer?

- 1 A. One year.
- 2 Q. And then what's your next position after
- 3 that?
- 4 A. Assistant production engineer.
- 5 Q. Was that also with Amtrak?
- 6 A. Yes.
- 7 Q. And how long were you in that position?
- 8 A. One year.
- 9 Q. Through the end of '79?
- 10 A. Yes.
- 11 Q. And what was your next position?
- 12 A. Engineer track.
- 13 Q. Still with Amtrak?
- 14 A. Yes.
- 15 Q. And when did you serve in that position?
- 16 A. 1980 to 1986.
- 17 Q. And what was your next position after that?
- 18 A. Assistant division engineer.
- 19 Q. Still with Amtrak?
- 20 A. Amtrak commuter rail.
- 21 Q. And when were you in that position?
- 22 A. 1987 to 19 -- to 2003 when MBCR assumed the
- 23 contract.
- 24 Q. And are you currently working?

1 positions?

2 A. I don't remember the exact amount.

3 Q. Do you recall approximately?

4 A. I think that's been provided to you. I  
5 don't -- I don't remember exactly. I'm sure you have  
6 that. We provided that to you. I can't remember  
7 exactly. It was -- I don't know. I'd be guessing. I  
8 can't remember.

9 Q. How did you find out that MBCR was going to  
10 be taking over the operations of the commuter rail?

11 A. It was common knowledge. This was  
12 approximately -- approximately nine months before the  
13 end of Amtrak's contract before Amtrak ended that MBCR  
14 had been awarded the contract.

15 Q. And what happened with your employment when  
16 MBCR took over the commuter rail?

17 A. Transferred to the same position.

18 Q. And are your duties and responsibilities --  
19 or were your duties and responsibilities at MBCR the  
20 same as your duties and responsibilities at Amtrak?

21 A. Yes.

22 Q. Were there any differences?

23 A. No.

24 Q. Name each person who you think was

1 talking right now about just doing an investigation  
2 without dealing with the investigation that she did.  
3 Just the idea of doing an investigation. Was it  
4 appropriate for Ms. Bowden to investigate the  
5 allegations that Alison Leaton raised against you?

6 A. Not for me to determine.

7 Q. Do you have any reason to think that it was  
8 inappropriate for her to look into these allegations?

9 A. No.

10 Q. Do you have any reason to conclude that  
11 Ms. Bowden acted improperly in the manner in which she  
12 investigated these allegations?

13 A. Yes.

14 Q. Name each way that you thought it was  
15 improper.

16 A. I thought it was, as I described earlier,  
17 similar to the Spanish inquisition. I was bought into a  
18 room with three people sitting there with no prior  
19 warning of what was going to be discussed so I could  
20 prepare.

21 Ms. Bowden started right off, and as I  
22 described earlier, took the lead and made these  
23 allegations about me. And I just thought the whole  
24 thing was a Spanish inquisition, very poorly done.

1 didn't know what to say, didn't know how to respond,  
2 sitting there in a stupor under this medication. It was  
3 just bizarre.

4 Q. So are you saying it was inappropriate for  
5 her to present the allegations to you?

6 A. In the manner it was done, yes.

7 Q. Okay. What was improper about the manner  
8 in which she presented the allegations to you? That's  
9 what I'm trying to understand.

10 A. To be called into a room with three people  
11 sitting there, resembling the Spanish inquisition, and  
12 to be accused of these alleged deeds I felt was  
13 outrageous based on my 28-year plus railroad career,  
14 wherein of all things I've been interviewing for 26  
15 years, processing thousands of resumes, had been -- had  
16 annual performance reviews done by engineering and  
17 general managers, executive people, documenting that I  
18 would exceed guidelines for hiring minorities and  
19 females.

20 One such evaluation was signed by Kevin  
21 Lydon when he was general manager of Amtrak. I felt in  
22 light of my lengthy railroad career, it was outrageous  
23 to be accused of something so ridiculous.

24 Q. So are you saying that Ms. Bowden shouldn't

1           A.    Very accusing, not what you would call a  
2           fair, impartial tone of voice and very curt questions.  
3           And the whole mannerisms and tone was very accusing and  
4           left no doubt that she had already made her mind up.  So  
5           it was a charade, a set-up, basically.

6           Q.    What were the types of questions that she  
7           asked that made you conclude that they were improper?  
8           What were the questions that you were referring to when  
9           you say they were improper questions?

10          A.    She -- one -- one I recall was she was  
11          asking me about -- accusing me of, in reviewing resumes,  
12          that I'm excluding resumes based on where a candidate  
13          lives.  I had no idea what she was talking about.

14          Q.    Do you think it was inappropriate for her  
15          to ask you that question?

16          A.    I think it could have been asked in a  
17          different forum.  But in the forum with her asking --  
18          and the other two gentlemen there, what their roles  
19          were, I don't know -- witnesses or observers, whatever.

20                To me, the deck was stacked already.  
21          Somebody had made up their mind that this must have been  
22          true, and let's set Eli up, for whatever reason.  I  
23          don't know.

24          Q.    Well, name each reason why you think

1 Q. You indicated that because she -- because  
2 Ms. Bowden said that if you couldn't answer the  
3 questions they were going to conclude that you had  
4 discriminated, is there anything about her telling you  
5 that, apart from her tone of voice, that you think was  
6 improper?

7 A. I think it was improper to be accused of  
8 something like that. I'm sitting there in a daze,  
9 unable to respond. I thought it was incredibly  
10 improper, the whole inquisition.

11 Q. What was improper about her telling you  
12 that if you couldn't answer the questions they were  
13 going to have to conclude that they were true? What was  
14 improper about that?

15 A. What was improper is Ms. Bowden came in  
16 with a prearranged list of questions all scripted out.  
17 I'm coming in stone cold, not a clue what's going on,  
18 heavily medicated with high blood pressure -- a total  
19 contrast. It was -- it was unfair, to say the least.  
20 The whole process was unfair.

21 Q. Was there anything improper -- here's my  
22 question to you on specifics. I understand you're  
23 complaining about things generally. But I'm trying to  
24 figure out for each of those things whether you thought

1 Clarify me if I'm wrong. The reasons why you think that  
2 it was inappropriate for Ms. Bowden to believe Alison  
3 Leaton instead of you was because of your long  
4 experience as an employee in the railroad industry  
5 versus Alison Leaton being on a short-term contract; is  
6 that correct?

7 A. Not quite. That wasn't quite my words.

8 Q. Okay.

9 A. Again, not just that. As I alluded to  
10 earlier, over the 26 years, I've looked at thousands of  
11 resumes, done thousands of interviews with Amtrak and  
12 always in the presence of HR -- never had a problem, was  
13 rated above average in valuing diversity, equal  
14 employment opportunity, affirmative action, hiring  
15 females in non-traditional roles.

16 One of the vacancies we were interviewing  
17 for during this time period was a female who resigned  
18 and left the railroad. So don't -- you know, you didn't  
19 quite paint an accurate picture. You base it on the  
20 entire career. You base it on that versus Ms. Leaton --  
21 it's apples and oranges when it comes to credibility.

22 Q. But you had only worked for Mass. Bay  
23 Commuter Rail for approximately nine months at this  
24 time; isn't that correct?



1 person who was responsible for what you say was the lack  
2 of advance notice about the meeting on March 26th?

3 A. Yes.

4 Q. And on what basis do you make that  
5 statement?

6 A. I placed -- when I first became aware -- I  
7 placed a call the day before to her to inquire what the  
8 nature of this meeting was going to be so I could be  
9 better prepared. As I testified earlier, as usual, you  
10 never get her to respond. You get a voice mail or an  
11 answering machine.

12 Q. But you understood that the meeting was  
13 going to be discussing concerns about hiring in the  
14 track department; isn't that correct?

15 A. The e-mail she had sent the day previous,  
16 which I got the Thursday morning, said there was going  
17 to be a meeting to address concerns over hiring in the  
18 track department, I think.

19 Q. So you understood, going to this meeting,  
20 that you were going to be discussing concerns about  
21 hiring in the track department; isn't that correct?

22 A. But nowhere near the nature of the meeting  
23 as it degenerated, no. I had no idea -- inkling what  
24 was coming. No.

1 Q. That wasn't my question. My question was:  
2 When you went into the meeting, you understood that you  
3 were going to be talking about concerns about hiring in  
4 the track department; isn't that correct?

5 A. That's what the e-mail said.

6 Q. And you knew that before going into the  
7 meeting?

8 A. Yes. I tried to get more information to  
9 elaborate with Bowden. I also -- now, I also -- I'm  
10 glad you brought this up. That same day, failing to  
11 hear back from Ms. Bowden, my only other contact on this  
12 matter was Alison Leaton.

13 I called Alison Leaton, asked her, What's  
14 the nature of this meeting tomorrow that I'm going to  
15 about some concerns?

16 Her response was, I don't know anything  
17 about it. You'll have to talk to Liz Bowden, which was  
18 an absolute lie because, as the e-mails you provided  
19 show, they were talking -- there was e-mails going back  
20 during this time between Bowden and Leaton.

21 So Leaton, after that call, contacts --  
22 sent an e-mail to Bowden saying, FYI, received a call  
23 from Eli Mistovich inquiring about the meeting. I just  
24 said, I don't know anything it, refer him to you.

1                   So that was an absolute lie because she  
2 obviously knew somewhat about the meeting because she  
3 had been exchanging e-mails, Leaton and Bowden.

4                   So Bowden knew -- she heard from Leaton  
5 also that I was inquiring. She could have made an  
6 attempt, didn't try too hard, to inform me a tidbit of  
7 what was coming down the pike, I believe deliberately to  
8 keep me in the dark so I was totally blind sided when I  
9 walked into that meeting with the three inquisitors  
10 sitting there. It was a deliberate attempt to keep me  
11 in the dark so I would be unable to be prepared and  
12 intelligently discuss it.

13                  Q.    Apart from this meeting on March 26th, did  
14 you ever attend any other meetings at MBCR of any kind  
15 where you didn't know what was going to get discussed in  
16 the meeting before the meeting started?

17                  A.    Yes.   Occasionally there might be one or  
18 two.

19                  Q.    And do you think those meetings were  
20 improper?

21                  A.    No.   Because they were of a routine  
22 fashion, and absurd, ridiculous accusations weren't  
23 being made singling me out at these other meetings. It  
24 was routine business that you transact every day.

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1 Bowden deliberately did not return my phone call, did  
2 not get back to me by phone or e-mail or any other way.

3 Q. And apart from the fact that you believe  
4 that it put you at a disadvantage because you weren't  
5 prepared and that they were prepared, is there any other  
6 reason why you think it was improper to have a meeting  
7 with no advance notice or have this meeting with no  
8 advantage notice?

9 A. Yes. A meeting that ultimately resulted in  
10 my employment termination, I would think it would be  
11 common courtesy to give a little hint -- to give a  
12 little agenda. It's not unusual to have an agenda  
13 distributed before a meeting so that all participants  
14 can prepare and intelligently have a discussion and have  
15 a productive meeting.

16 But it seems in this case it was  
17 deliberately kept one-sided so I had no idea what was  
18 coming at me. And they achieved their ultimate goal.

19 Q. Is there any other reason, other than  
20 reasons that you've given, why you think it was improper  
21 for them to have this meeting on March 26th without  
22 giving you what you considered to be advance notice?

23 A. Could you repeat that question one more  
24 time?

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1 at the time?

2 A. At the time I was shocked and stunned. I  
3 couldn't quite figure out what the hell she was talking  
4 about at first. I didn't -- at first I didn't  
5 understand what the hell she was talking about.

6 Q. And did you at some point during the  
7 meeting understand what she was talking about?

8 A. As best I could, I tried to piece together  
9 where this -- where these ridiculous allegations came  
10 from. The only contact person I had with anything  
11 involved in this hiring process was Alison Leaton. So  
12 as I sat there in a daze, I tried to piece together as  
13 best I could how I came to be accused by Ms. Bowden of  
14 these things.

15 Q. And you understood the specific -- at the  
16 time of the meeting, you understood the specific  
17 allegations that -- you understood that Ms. Leaton was  
18 accusing you of screening out black applicants based on  
19 where they lived; is that correct?

20 A. At first I didn't. At first I couldn't  
21 understand what the hell she was accusing me of.

22 Q. But during the meeting --

23 A. As time went on and as best I could I tried  
24 to piece together what the hell was going on there.

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1 Then I tried as best I could to piece together what she  
2 was saying.

3 Q. And you understood when you pieced things  
4 together that you were being questioned about  
5 allegations that Alison Leaton had made about your  
6 hiring practices; is that correct?

7 A. Yes.

8 Q. And you understood at the meeting that  
9 Alison Leaton was accusing you of discriminating against  
10 black applicants; isn't that correct?

11 A. As best I could put it together, no,  
12 because I didn't know the applicant was black. But  
13 apparently this one particular resume, Alison Leaton and  
14 possibly Ms. Bowden, they knew the applicant was black.  
15 I didn't know the applicant was black. I looked at a  
16 resume. I couldn't tell from the resume what the  
17 applicant was.

18 Q. I'm not asking you about Marvin Morgan's  
19 resume. I'm asking about what you understood they were  
20 talking about with you in the meeting. You understood  
21 in the meeting that they were presenting allegations  
22 from Alison Leaton that you were discriminating against  
23 an applicant because of his race; isn't that correct?

24 A. At first I didn't. But as the meeting went

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1 -- degenerated, yes, I did understand that.

2 Q. While you were there, you understood that  
3 that was the allegation that was being made?

4 A. Yes.

5 Q. And you understood at the time of the  
6 meeting while you were in the room that Alison Leaton  
7 was making some link between race and where the person  
8 lived and their name; is that correct?

9 A. No. At the time I couldn't quite figure  
10 out and decipher what the hell I was being accused of.  
11 I was so shocked and sitting there in a daze, I didn't  
12 know what the hell they were saying. I didn't know what  
13 the hell they were accusing me of. And I just couldn't  
14 quite fathom why I was there and what the whole purpose  
15 of this thing was.

16 Q. But you came to understand during the  
17 meeting that you were there because they were -- Alison  
18 Leaton was accusing you of discriminating against black  
19 applicants?

20 A. Yes.

21 Q. And did you tell anybody at the meeting  
22 that you couldn't respond to any of the allegations  
23 because you were not feeling well?

24 A. I worked on the railroad over 28 years,

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1 never took a sick day. I've been here no matter how I  
2 felt. That's the kind of dedication I have, which was  
3 always rewarded and appreciated by prior employers till  
4 this cast of characters came in MBCR.

5 Q. So the answer to the question is?

6 A. Repeat the question.

7 Q. Did you ever tell anybody at the meeting  
8 that you couldn't answer the questions because you  
9 weren't -- respond to the accusations because you  
10 weren't feeling well?

11 A. I didn't know why -- I didn't understand  
12 why I was feeling that way. I didn't understand that  
13 until almost a month later when I had a follow up with  
14 my personal care physician and he changed the  
15 medication.

16 And I explained what I was feeling. And  
17 apparently it was side effects. It wasn't until early  
18 April, after I was terminated. Only then did I  
19 understand side effects. And he took me off the  
20 medication and changed it. And I was back to normal. I  
21 didn't understand what I was going through.

22 At the time of this session it was  
23 approximately one week after I started the medication.  
24 As far as I was concerned, it says it takes your body a



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1 while to adjust to any new medication. I'd never been  
2 on high blood pressure medication in my life. This was  
3 the first time.

4 I figured my body was adjusting. I didn't  
5 know what condition I was in at the time. And I didn't  
6 know till a month later or till the first week of April  
7 after I had been on the medication for more than a  
8 month. Once I was off it, then I understood what I had  
9 been experiencing.

10 Q. You know, you need to respond to the  
11 question. Did you tell anybody at the meeting that you  
12 couldn't answer the questions because you weren't  
13 feeling well?

14 A. No. I didn't understand what my state was.

15 Q. Okay. So you didn't tell anybody at the  
16 meeting that you couldn't answer the questions because  
17 you weren't feeling well --

18 A. No.

19 Q. -- is that correct? You didn't tell them?

20 A. That's correct.

21 Q. And what were the side effects of this  
22 medication that you were experiencing on March 26th at  
23 the time of the meeting?

24 A. Mental sluggishness. The medication acts

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1 to slow your entire metabolism, heart beat, pulse, blood  
2 pressure. It affects your mental capability, severe  
3 headaches, diarrhea, gas, problems digesting anything.  
4 That's the major ones.

5 Q. And when you say mental sluggishness, what  
6 did that mean? How did that affect your ability to hear  
7 what they were telling you at the meeting?

8 A. As I described, it was almost a surreal --  
9 like I was in a daze or a stupor sitting there. And I  
10 was able to do my routine day-to-day stuff and get by.  
11 But I was hit with this.

12 This was not routine. This was -- ended up  
13 being career threatening. I just -- I just couldn't  
14 deal with it. I didn't understand what the hell was  
15 going on. And I didn't have the mental capacity to -- I  
16 wasn't sharp enough to respond or to intelligently have  
17 a two-way discussion.

18 Q. And so the mental sluggishness that you say  
19 you were experiencing didn't affect your ability to do  
20 other aspects of your job at MBCR; is that correct?

21 A. I was doing routine stuff, the day-to-day  
22 stuff. I've been doing it for 28 years. I can get by,  
23 the routine stuff. I have enough experience. I could  
24 get by.

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1 for your belief for other reasons,

2 A. I believe it was a combination of the life  
3 insurance, 401K. And this meeting that she had with  
4 City Councilor Chuck Turner played a huge role in this  
5 series of events. No question in my mind.

6 Q. Now, you indicated that -- any other  
7 reason?

8 A. No.

9 Q. You indicated that Ms. Bowden had  
10 determined that you were -- she believed that you were  
11 discriminating against black applicants. Assuming that  
12 she -- I understand that you question the source -- I  
13 understand that you're not agreeing with her belief,  
14 that you disagree with that. But assuming that that is  
15 her belief, that you were discriminating against black  
16 applicants, was there something improper about her  
17 terminating your employment on that basis?

18 A. Yes.

19 Q. What was improper about that?

20 A. As I tried to explain at the meeting, I try  
21 to select -- I didn't know whether that candidate was  
22 black. I try to select above average candidates. I  
23 judged that candidate that was the crux of this matter  
24 to be a below average candidate based on the resume.

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1 That's what I based all my decisions on. I didn't know  
2 whether the guy was black or white or blue.

3 Q. Excuse me, because that's not the  
4 question.

5 MR. TEAGUE: Well, if he's going to answer,  
6 let him finish the answer and not interrupt him.

7 MS. RUBIN: I'm sorry.

8 MR. TEAGUE: If you want to move to strike  
9 --

10 MS. RUBIN: I'm trying to move this  
11 deposition forward, and that wasn't the question that I  
12 asked.

13 Q. I'm not asking you whether you  
14 discriminated or didn't discriminate. And I'm not  
15 questioning that in this question. My only question  
16 was, Ms. Bowden was head of HR at MBCR; correct?

17 A. Correct.

18 Q. And, to your knowledge, she had determined  
19 that you were discriminating against black applicants;  
20 correct?

21 A. Correct.

22 Q. Was there something wrong -- again,  
23 assuming based on her belief -- I understand that you  
24 think her belief was wrong -- apart from that, apart

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1           A.    I explained to Mr. Urban -- it was the  
2           end -- towards the end of winter. In the wintertime, to  
3           do my job, I live out of that vehicle literally some  
4           nights -- work all night in the vehicle during snow  
5           storms. I had a large amount of personal effects --  
6           snow gear and all kinds of personal effects -- tools,  
7           equipment, snow shovels, much of it personal.

8                   I asked Mr. Urban -- you know, I even said  
9           to him -- I said, Steve, I'm not going to steal a  
10          company vehicle with MBOR on it. Can I drive it home,  
11          empty out all gear? I'll drive it back that night or  
12          the next morning, whatever his preference was.

13                   He explained, No. So, as a result, right  
14          out there in front of full view of the entire Cobble  
15          Hill office, my coworkers for 18 years, union and  
16          management, everybody, in full view of everybody, T  
17          railroad operations, the dispatchers, my fellow  
18          assistant division engineers, everybody that has a view  
19          out the picture windows, I had to transfer this large  
20          volume of gear from the company vehicle into this sedan,  
21          which was much smaller. I had to cram everything in.  
22          It was ridiculous. It was a circus.

23                   And then, upon being transported home by  
24          this limousine -- the driver was employed by Paul Revere

1 Bus Company, another MBCR affiliate, so they made money  
2 on both ends, I guess -- I had to empty this gear in my  
3 driveway and front yard at my house.

4 And after the car had left, my wife came  
5 home, looked at all my possessions strewn all over the  
6 driveway, and asked me what happened. Embarrassing in  
7 front of my coworkers at Cobble Hill. Embarrassing at  
8 home to have my wife pull up and see all my railroad  
9 gear and snow gear and paperwork -- everything, all over  
10 the yard and driveway. Humiliating to be put through  
11 that.

12 Q. And when you were escorted by Mr. Urban to  
13 your office initially, were there other people who saw  
14 you being escorted to your office?

15 A. Not that I can recall.

16 Q. And when he escorted you out to the parking  
17 lot, was there anybody who observed you being escorted  
18 to the parking lot?

19 A. Yes. There were other people coming in and  
20 out.

21 Q. Who?

22 A. I don't remember everybody because, again,  
23 my frame of mind, I was so upset and shocked at just  
24 being -- losing my job --

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1 Q. I'm asking who you recall.

2 A. -- and under this medication. I think  
3 Steve Hansberry, assistant chief dispatcher, came out.  
4 And he had some kind of discussion with Mr. Urban. I  
5 don't remember what the nature was. And he's the only  
6 person I can recall. I know there were others in and  
7 out. And I know there were others seen because it  
8 wasn't -- as soon as I got home, the phone was ringing  
9 off the hook with phone calls from various people. So  
10 people saw it right there and they knew something was  
11 going on. And --

12 Q. Who called you when you got home?

13 A. Oh, that's a year and a half ago. I can't  
14 remember exactly who.

15 Q. Name anybody.

16 A. Probably Peter Wright.

17 Q. And did Peter Wright see you unpacking one  
18 car and loading another?

19 A. I don't think so. But he asked me what the  
20 hell happened so apparently the word had been related to  
21 him.

22 Q. Who besides Peter Wright called you?

23 A. I had many calls the first night, and I  
24 can't remember who -- who called me that first night. I

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1 received ultimately many calls of support from -- almost  
2 unanimous from many members of MBCR commuter rail  
3 management and union people. But I can't remember who  
4 I -- again, I wasn't -- I had just been terminated. I  
5 was shocked, stunned. And I'm still under this  
6 medication that I can't remember.

7 Q. Did anybody tell you that they had seen you  
8 taking things out of the MBCR car and putting it in  
9 another car?

10 A. They might have. I can't remember a year  
11 and a half ago the exact nature of the discussion.

12 Q. And do you recall anybody seeing that --  
13 seeing you move things from one car to another?

14 A. Oh. Steve Hansberry was there. And I know  
15 there were people -- there were -- in the parking lot  
16 there were trucks leaving and going. Some people --  
17 many people were leaving around 4 o'clock, the end of  
18 the regular work day. Some were coming in.

19 Second shift was starting. There was a  
20 traffic of people and vehicles in and out. But do I  
21 remember? I wasn't in the frame of mind to remember who  
22 was there. I was shocked that I had to remove all my  
23 possessions from one vehicle to the next because I just  
24 lost my job.



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1 Q. So the only person that you can recall  
2 seeing this was Steve Hansberry; is that correct?

3 A. That's the only one right now, a year and a  
4 half later. That's the only person I can specifically  
5 recall.

6 Q. And you're saying that Mr. Urban concluded  
7 that you had discriminated against black people -- it  
8 was your belief that Mr. Urban concluded that you were  
9 discriminating against black applicants?

10 A. That's what he testified to.

11 Q. Right. Do you have any reason to believe  
12 that he doesn't believe that?

13 A. I have no idea.

14 Q. So as far as you know, Mr. Urban did  
15 conclude that you were discriminating against black  
16 applicants?

17 A. Apparently.

18 Q. When did you first meet Steve Urban?

19 A. With Amtrak. Maybe late '70s early '80s.  
20 I can't remember exactly.

21 Q. And during the period of time before  
22 that -- before you came to MBCR, did you have any  
23 relationship with him outside of work?

24 A. No.

1 Q. And during the period of time after you  
2 became an MBCR employee, did you have any relationship  
3 with him outside of work?

4 A. No.

5 Q. Before you became an MBCR employee in your  
6 interactions with Mr. Urban, did he have any familiarity  
7 with your hiring practices, to your knowledge?

8 A. He might have. I have no specific  
9 knowledge of that.

10 Q. And in the course of your employment after  
11 you became an MBCR employee, approximately how  
12 frequently did you have interactions with Mr. Urban?

13 A. Maybe once every two weeks.

14 Q. And on what kinds of issues?

15 A. I'd see him at Cobble Hill on routine  
16 issues. I can't remember the exact nature of it.

17 Q. Did you enjoy a good working relationship  
18 with Mr. Urban?

19 A. I seemed to.

20 Q. Do you have any difficulties with Mr. Urban  
21 before the March 26th meeting?

22 A. Only once.

23 Q. And what was that?

24 A. Are you referring to MBCR or Amtrak?

1 Q. MBCR.

2 A. No.

3 Q. What was the issue you had with him in the  
4 Amtrak days?

5 A. This was an issue back in the early '80s.  
6 Mr. Urban -- I think he was a superintendent. He was in  
7 charge of the train dispatches over on the Amtrak  
8 intercity side, including South Side commuter rail,  
9 which included the Dorchester branch.

10 And the dispatchers under his supervision  
11 refused to give my track patrols time to perform their  
12 normal track inspections to comply with FRA rules.

13 Since we were in violation, I took the  
14 Dorchester branch out of service and was summoned over  
15 to a meeting to discuss it. And in no uncertain terms,  
16 I looked right across the table and explained what the  
17 problem was, that it was incompetent dispatching -- lazy  
18 and incompetent dispatching by the dispatchers under the  
19 supervision of Mr. Urban. That was really the only  
20 unusual thing that had transpired between us.

21 Q. And did you experience any hostility from  
22 Mr. Urban as a result of that event that happened in the  
23 early 1980s?

24 A. No. That was long ago.

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1 Q. While you were at Mass. Bay Commuter Rail,  
2 did you have any -- strike that.

3 Again, now I'm just focusing on the period  
4 of time when you were at Mass. Bay Commuter Rail. Did  
5 Mr. Urban ever say anything that was complementary to  
6 you about your performance as an MBCR employee?

7 A. Not that I can recall.

8 Q. Did anybody ever tell you that Mr. Urban  
9 said anything -- did anybody ever tell you that  
10 Mr. Urban said anything that was complimentary about  
11 your performance?

12 A. Yes.

13 Q. And what was that?

14 A. Somebody told me that -- and I don't know  
15 how they -- whether it was directly from Urban or what  
16 -- that he had related that his participation in this  
17 process in terminating me was the hardest thing he ever  
18 had to do in the railroad -- in his railroad career.

19 Q. And who told you that?

20 A. It was long -- I can't remember who said  
21 that.

22 Q. And what did you understand that remark to  
23 mean?

24 A. I thought it meant that it was the hardest

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1 thing -- I thought it meant that Mr. Urban really didn't  
2 believe that was the proper action, that there should  
3 have been some action less than termination taken, some  
4 intermediary action, that it really didn't warrant  
5 terminating a 28-year railroad career.

6 Q. Did Mr. Urban ever say anything to you that  
7 was critical about your performance as an employee?

8 A. No.

9 Q. Did anybody ever tell you that Mr. Urban  
10 said anything that was critical about your performance  
11 as an MBCR employee?

12 A. No.

13 Q. Did Mr. Urban ever say anything to you that  
14 was complimentary about your hiring practices at MBCR?

15 A. No.

16 Q. Did anyone ever tell you that Mr. Urban  
17 said anything that was complimentary about your hiring  
18 practices at MBCR?

19 A. No.

20 Q. Did Mr. Urban ever say anything to you that  
21 was negative about your hiring practices at MBCR?

22 A. No.

23 Q. Did anyone ever tell you that Mr. Urban  
24 said anything that was negative about your hiring

1 Amtrak. And then MBCR came on the scene.

2 Due to normal attrition, entering the  
3 winter of 2003, 2004, I had 37 fewer track department  
4 employees than I had two winters ago with Amtrak. I  
5 made this known through the normal chain of command at  
6 our snow meetings -- with my meetings with supervisor  
7 Steve Nevero.

8 And after a month nothing happened so I  
9 wrote a memo, which you have as an exhibit in front of  
10 you, from Mr. Nevero's testimony.

11 As relates to Mr. Lydon, the first snow  
12 storm at MBCR's tenure was December 6th and 7th of  
13 2003. It snowed most of the weekend. And it  
14 degenerated into a complete fiasco where we didn't even  
15 have enough forces to go out and clean certain platforms  
16 and parking lots. And I believe the memo -- it was the  
17 worst fiasco of any snowstorm since I had been on the  
18 commuter rail.

19 And despite the fact that at Amtrak we had  
20 handled many larger storms in routine fashion because we  
21 had the proper forces, the storm was such a fiasco --  
22 including there was one fatality, incidentally. There  
23 was a B&B employee, a Mr. McTague who was killed by a --  
24 struck by a train. One contributing factor was they

1 were working shorthanded out there because MBCR --  
2 Mr. Lydon hadn't hired anybody.

3 There was a snow meeting called with the  
4 MBTA the following week to discuss the previous  
5 weekend's snowstorm and to ensure it didn't happen  
6 again. During the course of the three-hour meeting,  
7 there was much discussion about processes.

8 After two hours of listening about  
9 processes, I finally spoke up and told Anna Barry, the  
10 head of railroad operations who conducted the -- who  
11 called the meeting, the reason wasn't the process of  
12 dealing with the snowstorm. We had handled multiple  
13 larger snowstorms with Amtrak in routine fashion because  
14 we had sufficient forces. The problem with this storm  
15 is that since their arrival, MBCR had not hired anybody  
16 into the engineering or the track department. That was  
17 the one and only reason for the fiasco.

18 I told the truth. That was the true cause.  
19 I was told from several different sources that in the --  
20 within the following week, Mr. Lydon was overheard  
21 commenting at meetings or someplace by two different  
22 sources that he was not pleased with my comments that --  
23 saying the truth, that the reason for the snow fiasco  
24 was lack of MBCR's hiring.

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1 Kevin Lydon was not pleased with what you had said at  
2 this meeting. Who were those sources?

3 A. That's almost two years ago. I can't  
4 remember who.

5 Q. You don't know who said that to you?

6 A. I remember I got it from two different  
7 sources.

8 Q. But you don't know who those people are?

9 A. I can't remember who that was.

10 Q. And what is your understanding about what  
11 you said at this meeting that Kevin Lydon didn't like?

12 A. He specifically objected to the fact that I  
13 said I told the truth, that the true reason for the lack  
14 of proper handling of that snowstorm was we just did not  
15 have enough bodies to perform snow duty as we routinely  
16 had for the prior 18 winters.

17 As a matter of fact, Mr. Nevero was at the  
18 same meeting. I presented Mr. Nevero -- I had a copy of  
19 that memo that has been entered as an exhibit. We were  
20 37 people less. I had previously provided Mr. Nevero --  
21 as you see, there's an attachment to that letter. It  
22 wasn't on this one, but I gave him the names of the 37  
23 people we had the two winters prior.

24 It was clear and simple, a hundred percent



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1 certain the reason for the fiasco was MBCR did not hire  
2 anybody and we were short bodies. We had to decide for  
3 the first time ever to clean snow from this platform and  
4 not that platform. Never had been done in 18 winters  
5 with Amtrak.

6 Q. When you say the "fiasco" what are you  
7 referring to?

8 A. The fiasco was the two-day snowstorm  
9 December 6th and 7th where trains were late, station  
10 platforms were not done. They were -- had feet of snow  
11 on them. It was a complete fiasco. One employee got  
12 killed, struck by a train out at Wellesley Farm, a  
13 complete fiasco.

14 Q. And where did this meeting take place?

15 A. At MBTA's 45 High Street operations center.

16 Q. And who there was -- who was present at  
17 that meeting from Mass. Bay Commuter Rail?

18 A. There was a total of probably 20 people.

19 Q. Was Mr. Urban there?

20 A. Mr. Urban -- I can't remember if he was  
21 there or not. He probably was, but I don't specifically  
22 remember.

23 Q. Was Mr. Nevero there?

24 A. Mr. Nevero was there.

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1 you were treated by Mr. Urban?

2 A. No.

3 Q. Did you notice any change in how you were  
4 treated by Ms. Bowden?

5 A. No.

6 Q. Did you notice any change in how you were  
7 treated by Steve Nevero?

8 A. No. At the meeting, Mr. Nevero tried to  
9 dispute the numbers that I was giving him. And I had to  
10 allude -- I said, Steve, you know, you can spin it any  
11 way that you want. But we're 37 short of what we had  
12 two winters ago.

13 No matter how MBCR tried to spin it, we  
14 have 37 less bodies this winter than we did two winters  
15 ago. Other than that, there was no other difference in  
16 treatment.

17 Q. And he was just disagreeing with you at the  
18 meeting when you say no difference in treatment?

19 A. Yes.

20 Q. He didn't express any hostility towards you  
21 after the meeting?

22 A. No.

23 Q. Did you notice any change in how you were  
24 treated by Kevin Lydon after this meeting?

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1 said anything that was critical about your performance  
2 as an MBCR employee?

3 A. No.

4 Q. Did Mr. Nevero ever say anything to you  
5 that was complimentary about your hiring practices at  
6 MBCR?

7 A. No.

8 Q. Did anyone ever tell you that Mr. Nevero  
9 said anything that was complimentary about your hiring  
10 practices at MBCR?

11 A. No.

12 Q. Did Mr. Nevero ever say anything to you  
13 that was negative about your hiring practices at MBCR?

14 A. No.

15 Q. Did anyone ever tell you that Mr. Nevero  
16 said anything that was negative about your hiring  
17 practices at MBCR?

18 A. No.

19 Q. Did you regard Mr. Nevero as an  
20 approachable person, somebody that you could speak to if  
21 you had to?

22 A. Yes.

23 Q. Did you trust him?

24 A. No.

1           A.    Mr. Nevero doesn't lie. He just doesn't  
2           respond or doesn't take any action; therefore, he saves  
3           -- he doesn't spend any of MBCR's money, increasing  
4           their profits. In every aspect of his operation, that's  
5           how he conducted himself.

6           Q.    And you're not aware of any other instances  
7           other than that meeting when you believe that he lied;  
8           is that correct?

9           A.    There's a fine line between lying and half  
10          truths and no response. There's a fine line there.

11          Q.    Okay. But I'm asking about lying.

12          A.    No.

13          Q.    And at that meeting, what makes you say  
14          that Mr. Nevero lied as opposed to expressing his  
15          belief?

16          A.    Because he was basing it on an Amtrak  
17          budget. And, again, I had had this discussion with him  
18          multiple times previous to this meeting to the point  
19          where rather than -- I had discussed it verbally at the  
20          snow meeting in August to no avail. I had to then, a  
21          month later, in September -- I think September 25th --  
22          document it with that memo that's previously been  
23          entered as a memo saying how shorthanded we were and we  
24          need to hire additional people.

1 other way that you think Alison Leaton wrongfully  
2 interfered with your employment relationship at MBCR?

3 A. Yes.

4 Q. Okay. I want you to name each reason.

5 A. The original incident that led to this  
6 episode, we had three no-shows. We were scheduled for a  
7 day of interviews. There were three no-shows.

8 During this time we realized because of the  
9 no-shows we'd have to consider additional candidates. I  
10 had previously sent Alison Leaton all the resumes I had  
11 in my possession which I gathered from employee  
12 references. And she now showed me a stack of resumes --  
13 I don't know, a dozen, 15, 25, something like that or a  
14 stack of resumes -- and said, We'd better start  
15 considering these because with these no-shows we are  
16 going to need to set up an additional day of  
17 interviews.

18 As I was sorting through the pile looking  
19 at each one, this one particular resume, as soon as I  
20 was putting -- I'd examine them. I'd put them aside.  
21 And as soon I put one aside in particular, she yelled  
22 across the table, You're excluding that resume because  
23 with the name Marvin Morgan and being from Dorchester,  
24 you think he's a minority. That's discrimination.

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1 this work based on my 28-year career here. What her  
2 interpretation or what her take on it was, I wouldn't  
3 attempt to enter the mind of Alison Leaton.

4 Q. Okay. So you don't know whether she  
5 believed it or not?

6 A. I have no idea.

7 Q. And in terms of your interactions with  
8 Alison Leaton in general, when did you first meet her?

9 A. Sometime in the late autumn early winter of  
10 03.

11 Q. And was this in connection with hiring  
12 trackmen?

13 A. Yes.

14 Q. Do you have any relationship with her  
15 outside of work?

16 A. No.

17 Q. And in the course of your employment,  
18 approximately how many times did you have interactions  
19 with Ms. Leaton?

20 A. On the phone? Or in person?

21 Q. Either way.

22 A. Days of interviews or -- I mean, how do you  
23 want --

24 Q. Approximately how many days out of your

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1 employment were you --

2 A. Interviews in person or on the phone  
3 talking? 15.

4 Q. And this was exclusively around hiring  
5 trackmen?

6 A. Yes.

7 Q. Do you enjoy a good working relationship  
8 with Alison Leaton?

9 A. I'd say decent.

10 Q. Did you have any difficulties with  
11 Ms. Leaton before the issues that surfaced around Marvin  
12 Morgan?

13 A. Not really. I mean, like I said, she was a  
14 bit odd. She really went off on a tangent on this -- on  
15 this presidential primary thing. She was really, really  
16 off, almost on an irrational basis on that. But I can't  
17 say there was any problems.

18 Q. Okay. Did Ms. Leaton ever say anything to  
19 you that was complimentary about your performance as an  
20 MBCR employee?

21 A. Not that I can remember.

22 Q. Did anyone ever tell you that Ms. Leaton  
23 said anything that was complimentary about your  
24 performance as an MBCR employee?

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1 Dean thing and the Map Quest thing?

2 A. That and that time where, you know, I'm  
3 going through two dozen resumes, and as soon as I put  
4 one -- in the middle of the stack, when she was looking  
5 over -- as soon I put one like that, along with the rest  
6 of them, she says, You're excluding that because you  
7 think being Marvin Morgan from Dorchester, you think  
8 he's a minority. That's pretty bizarre. Do I trust a  
9 person like that? No.

10 Q. To your knowledge, when she made that  
11 statement, did she believe it?

12 A. I don't know whether she believed it.  
13 Or -- apparently -- I don't know that she believed it.  
14 Apparently, I was being set up. She knew that was a  
15 minority. I didn't know. And as you look at that  
16 resume now, you don't know if Marvin Morgan is a black  
17 or an Irish guy. You have no idea from Dorchester.  
18 Kevin Lydon is from Dorchester. I don't know if he's  
19 black or white.

20 But it was just bizarre. And it was so  
21 immediate that it had to be I was being set up. It had  
22 to be.

23 Q. Did Alison Leaton have any reason to set  
24 you up?



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1 A. It didn't help me.

2 Q. Okay. I'm not sure what you mean by that.  
3 Do you know whether it played a role --

4 A. I think it may have played a role in her  
5 deliberations. That's how odd and bizarre and  
6 irrational --

7 Q. And when you say it may have played a role,  
8 why are you saying that? On what basis?

9 A. Because how else can I explain this  
10 incredible scenario where she's asking me to sort  
11 resumes? And there's a stack of two dozen resumes. And  
12 no comment is made as I'm looking through these resumes  
13 until I put one there, along with -- I'm putting them  
14 all there

15 . As I read it -- and during this time I  
16 don't think I covered -- during all this time, I'm doing  
17 the best I can. I'm reading them with one eye. During  
18 this time I'm blind in my right eye. I think you have  
19 documentation. I had a branch retinal vein occlusion.  
20 A blood vessel burst in my right eye sometime over the  
21 winter.

22 So during this entire time period, I cannot  
23 see anything out of my right eye but a red blotch. The  
24 left eye has always been my weakest eye. I'm trying to

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1 do the best I can going through these resumes. We got  
2 three no-shows consecutive.

3 And as soon as I do this -- as soon as --  
4 the others, nothing was said. As soon as that one was  
5 put there, she yelled, You're putting that one there  
6 because with the name Marvin Morgan from Dorchester, you  
7 think he's a minority. It was absolutely bizarre how  
8 she could make -- that's racist on her part to make that  
9 accusation.

10 Apparently -- the only conclusion I could  
11 draw is she knew it was a minority and this was a  
12 set-up, a plant, whenever scenario you want to say. She  
13 had to have knowledge of that.

14 Q. Okay. You've already -- I mean, again, I  
15 don't want you to repeat things that you've already  
16 testified to. I'm trying to explore new territory.

17 When I'm asking you -- or the question I  
18 was asking you is why you thought it may have been a  
19 set-up. And you indicated that it may have been because  
20 she was in favor of Kerry and you were in favor of Bush.  
21 And the reason for that belief is because you think  
22 otherwise it's just too incredible to have happened. Is  
23 that fair -- is that what your testimony is?

24 A. I thought I already covered that.

1 A. No. What I've already said about it.

2 Q. To your knowledge, did Alison Leaton tell  
3 anyone other than Liz Bowden that Alison Leaton believed  
4 that you were discriminating?

5 A. I have no idea.

6 Q. And do you know what role, if any, Alison  
7 Leaton had in the termination decision?

8 A. She provided the fodder. That's the extent  
9 of her role. And she lied about -- you know, I asked --  
10 I inquired if she had any idea what this meeting was  
11 about on March 26th, and she outright lied to me on the  
12 phone that she had no knowledge and that I'd have to  
13 contact Liz Bowden.

14 MS. RUBIN: I'd like to have this marked as  
15 Deposition Exhibit No. 11.

16 (Exhibit No. 11 document marked.)

17 Q. Going back to the March 26th meeting, did  
18 you take any notes during or after that meeting  
19 regarding what happened at that meeting?

20 A. No. I was sitting there in a daze stunned  
21 and speechless. And I didn't know it was a forum for  
22 note taking. I didn't bring a notebook. I tried to get  
23 some hint or inkling what the meeting was about so I  
24 could have a productive meeting. But I was told

1 nothing, and I was blind sided. And I didn't take any  
2 notes. I was speechless.

3 Q. Okay. Looking at what has been marked as  
4 Deposition Exhibit 11, I would like to go through it and  
5 find out which of these statements you agree occurred,  
6 which of them you disagree with, which you can't recall.

7 So I'd like to go through it. It deals  
8 with the March 26th meeting. And I'd like to start at  
9 page one. And the second paragraph starting with,  
10 Meeting held March 26th at 1:30. In that paragraph it  
11 refers to the time, the place, and the people who were  
12 there. To your knowledge, is that a correct statement  
13 of the time, place, and the participants?

14 A. Yes.

15 Q. Moving to the next paragraph, it says,  
16 Statement from E. Bowden indicating that MBCR is an  
17 equal opportunity employer is indicated in the policy  
18 signed by our general manager in August 2003. The  
19 reason for the meeting is a report by the recruiter,  
20 Alison Leaton, that Eli Mistovich was eliminating  
21 qualified applicants because of their name and their  
22 home address as is indicated on their resume under the  
23 assumption that they were black.

24 Do you recall Elizabeth Bowden making a